



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.934 of 2019

and

Crl.M.P.No.19336 of 2019

Ari @ Arokiadoss

...Appellant/Accused

Versus

State represented by its
The Inspector of Police,
Karippatti Police Station,
Karippatti, Salem District.
Crime No.155 of 2014

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) Cr.P.C seeking to set aside the order passed in Special Sessions Case No.34 of 2015 dated 08.05.2017 on the file of the Sessions Judge, Mahila Court, Salem, Salem District.

For Appellant : Ms.Vasavi Sridevi
Legal Aid Counsel

For Respondent : Mr.R.Suryaprakash
Government Advocate

JUDGMENT

This Criminal Appeal has been filed seeking to set aside the order passed in Special Sessions Case No.34 of 2015 dated 08.05.2017 on the file of the Sessions Judge, Mahila Court, Salem, Salem District.

2. The respondent police registered the case against the appellant in Crime No.155 of 2014 for the offence under section 366 IPC and section 6 r/w 5 of POCSO Act. After investigation they laid a charge sheet before the Mahila Judge, Salem. Since the offence against the women particularly child under POCSO Act, the learned Special Judge after completing the formalities, framed the charge against the appellant for the offence under section 366 IPC and section 6 r/w 5 (m) of POCSO Act. After



framing the charges, during the trial in order to prove the case of the prosecution, on the side of the prosecution as many as 18 witnesses were examined as P.Ws.1 to 18 and 17 documents were marked as Exs.P1 to 17. However, no material object was exhibited. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put to the appellant by questioning under Section 313 Cr.P.C., he denied it as false and pleaded not guilty. On the side of the defence, no oral evidence was produced, 4 exhibits were marked. After completing the trial, after hearing the arguments advanced on either side, the learned Special Judge found guilty of the accused for the offence under section 366 IPC convicted and sentence to undergo 10 years R.I and to pay fine of Rs.10,000/- in default, to undergo 6 months S.I and also for the offence under section 5(m) of POCSO Act, sentenced to undergo 10 years R.I and to pay fine of Rs.10,000/- in default, to undergo 6 months S.I. Challenging the said judgement of conviction and sentence, the appellant has filed the present appeal before this Court.

3. The learned Legal Aid counsel for the appellant would submit that the alleged occurrence is said to have taken place on 07.03.2014 but the complaint lodged by the defacto complainant only on 23.03.2014 after 16 days of the said occurrence. The respondent has not properly explained the delay of lodging complaint and there are many contradictions between the statement recorded under section 161 Cr.P.C and also the statement recorded under section 164 Cr.P.C., The learned trial Judge failed to consider the above said contradictions and simply exhibited the evidence of the victim girl which is against law; which is unsafe to convict the accused for uncorroborated evidence. Further there was previous enmity between the appellant and the victim's family. The trial Judge failed to consider the previous motive and enmity. Soon after the occurrence the victim girl was brought to the doctor. The doctor one who examined the victim girl was examined as P.W.14 and he has given the treatment and referred to the Government hospital, Salem and she has not spoken anything about the occurrence and also the prosecution has failed to establish that as to whether the victim girl as per the reference given by P.W.14 brought to the Government hospital, Salem and given treatment. Therefore, date of occurrence and place of occurrence is highly doubtful and also there is no material to connect this appellant with the occurrence. P.W.1 has stated that she gave a written complaint whereas the said complaint was not found therefore, it leads to a strong suspicion.

4. According to the learned counsel for the appellant, as per the case of the prosecution, the victim girl played with one of her friends Ilavarasi under the tamarind tree and at that



time, the appellant took the victim girl to nearby place and forcibly committed rape. But Ilavarasi has not supported the case of the prosecution. Even in the complaint, the victim girl has not named the accused/appellant. Even in the FIR, the name of the appellant is shown as "not known". But subsequently, the victim girl stated that the mother only stated the name of the accused which also clearly creates suspicion that whether the victim girl pointed out the name of the appellant or not. Though the appellant is a known person and his name not mentioned but she should have identified and indicated the house or any junior member of the said family. Therefore, not mentioning the name of the appellant in the FIR creates suspicion. The prosecution failed to establish the case. Further, how they connect the appellant in the case is also highly doubtful. Therefore, the learned Special Judge failed to appreciate the entire evidence and simply recorded the confession based on the uncorroborated evidence of victim girl which warrants interference of this Court. Therefore, the judgment of trial Court is liable to be set aside and the appeal is to be allowed.

5. The learned Government Advocate would submit that the age of the victim girl is only 8 years at the time of the occurrence. She was playing with her friend under Tamarind tree. The appellant forcibly took the victim girl into the bath room and closed the bath room and committed penetrative sexual assault on the victim girl. Thereafter, due to that the victim girl sustained injury in her private part and she immediately not revealed the same to her mother and due to force she was suffering from fever. Therefore, the next day the mother took the victim girl to the hospital and there, she was examined by the doctor who was examined on the side of prosecution as P.W.14. After the victim girl was medically examined and since she is a girl child, P.W.14 referred her to Government Hospital. Since the victim's family did not have sufficient money to take treatment in the private hospital, she was referred to Government Hospital, Salem. Subsequently, on 23.03.2014, the victim girl informed to her mother about the occurrence and the mother only lodged the complaint to the respondent police. The respondent police investigated the matter. Though, the victim girl did not know the name of the appellant, she identified the person to her mother and mother mentioned the name and asked him. Subsequently she has stated the name of the appellant and eventhough name of the appellant has not been mentioned in the FIR, subsequently when she was produced before the Judicial Magistrate, her statement was recorded under section 164 Cr.P.C. She named the appellant and also she has clearly narrated the occurrence. Subsequently she was produced before the doctor. The doctor after conducting medical examination gave a certificate that the victim girl was subjected to penetrative sexual assault and her Hymen was not intact.



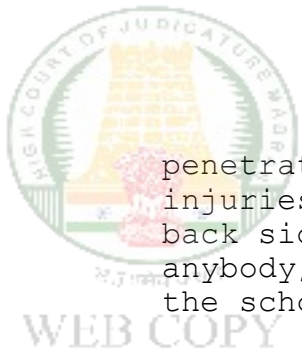
6. The mother of the victim girl was examined as P.W.1 and father of the victim girl was examined as P.W.2. The victim girl was examined as P.W.3. After the occurrence i.e., next day to the occurrence, the victim girl was brought to the doctor who was examined as P.W.14 and subsequently after the complaint, the victim girl was produced before P.W.9 for medical examination. From the evidence of P.Ws.1, 2, 3, 9 and 12 and the documents viz., Ex.P1 complaint, Ex.P3 sexual offence certificate and Ex.P5 Age certificate of the victim girl, Ex.P6 school certificate of victim girl, the prosecution has proved the age of the victim girl and also statement recorded under section 164 Cr.P.C which clearly proves that the appellant only has committed the offence. The prosecution has proved the case beyond reasonable doubt and there is no merit in the appeal.

7. Heard both sides and perused the records.

8. The appellate Court is a fact finding Court. It has to reappreciate the entire evidence to give independent findings. As such, this Court also perused the entire records.

9. The charges were framed against the appellant for the offence under section 366 IPC and also section 5(m) POCSO Act by the learned Special Judge. In order to prove the charges, the prosecution examined 18 witnesses out of which, the victim girl was examined as P.W.3. She has clearly narrated that the appellant took the victim girl and kept her in the bath room under the tamarind tree and forcibly committed penetrative sexual assault. Though she has not immediately informed, due to force, she suffered with fever. Therefore next day the victim girl was brought to P.W.14 for treatment. Since the victim girl has not informed the parents, they were not aware of this. Subsequently the victim girl informed to the mother on 23.03.2014. But the date of the occurrence is 07.03.2014. Since the age of the injured witness is only 8 years at the time of occurrence, she has not revealed the occurrence, most probably the appellant would have threatened her and subsequently on 23.03.2014 only, the victim girl informed to the mother and mother informed to her husband and they laid a complaint.

10. The evidence of P.W.14 clearly shows that only the victim girl was brought to him for treatment and he found that the victim girl was suffering from fever and urinary infection. She was referred to the doctor viz., M.Kalaiyarasi. Since the victim girl's parents stated that they did not have money, he gave Rs.50/- and referred the matter to the Government hospital. Subsequently after giving complaint, the victim girl was produced before the Judicial Magistrate and the learned Magistrate recorded the statement from the victim girl under section 164(5) Cr.P.C., in which the victim girl has clearly stated that in the nearby house, the appellant was residing in that village. The victim girl's statement shows that prior to 15 days, the appellant who took the victim girl forcibly had



penetrative sexual intercourse and therefore, she sustained injuries on her private parts and also complaints of pain in her back side. When she went to the house, she did not inform it to anybody, since she was suffering from fever, she did not go to the school and the mother took her to doctor P.W.14.

11. The victim girl was examined as P.W.3. She has clearly narrated before the Special Court during trial by examining as witness. She was also brought to the doctor P.W.9 for medical examination who examined the victim girl on 24.03.2014 after 15 days of the occurrence. Therefore, the doctor opined that there was no external injury since the victim girl has taken treatment and not informed to anybody regarding the occurrence and only stated that she was suffering from fever and urinary infection. Due to the treatment, the injuries might have healed. Therefore, at the time of examination by P.W.9, there was no external injury but she has stated that hymen was not intact and possibility of having sexual intercourse. Therefore, from the evidence of P.W.3 and P.W.9, the prosecution has clearly proved that the victim girl was subjected to penetrative sexual assault. Now the point is who has committed penetrative sexual assault. Whether the appellant or not.

12. In this case, the learned counsel for the appellant vehemently contended that the mother while giving the complaint ie., after 15 days not mentioned the name of the appellant in the FIR. Since she has not named the appellant, the name of the appellant has not been mentioned and it is shown as "known person". Subsequently the victim girl was produced before the learned Judicial Magistrate, at that time, she has mentioned the name and she has also admitted during cross examination that her mother only named the appellant. The age of the victim girl is only 8 years and certainly it is possible to remember the person and also the appellant is a known person and so, she identified the person. Therefore, the mother named the appellant. She also stated that the appellant is the one who has committed the offence.

13. It is well settled proposition of law that the FIR is not an encyclopedia but in the FIR, the occurrence has been clearly mentioned. The commission of offence has been brought to the police and the police after investigation, found from the statement of witnesses that the appellant one who has committed the offence. From the evidence of P.W.1/mother of the victim girl, P.W.3/victim girl and P.W.9/ doctor, the prosecution has clearly proved the case. There is no eye witness in this case, but in cases of this nature, since culprits would be waiting for the chance of loneliness of the girl child, they used to take them to the hidden place and also used to commit the offence. Therefore, the evidence of victim girl is cogent and trustworthy



WEB COPY

and the same cannot be simply thrown away. Though the general principle is that corroboration is necessary but not in all the cases, if eye witness was there and eye witness would speak about the scene of occurrence, then corroboration is necessary. In this case, there is no eye witness, except the victim girl and the victim girl has come to the Court and she has clearly narrated the occurrence and also identified the appellant before the Court. Even prior to that, the victim girl was produced before the learned Judicial Magistrate and the statement of the victim girl was recorded under section 164 Cr.P.C., in which she has clearly narrated the events and also named the appellant. The doctor/P.W.9, who medically examined the victim girl has clearly stated that the victim girl was subjected to penetrative sexual assault and her hymen was not intact. At the age of 8 years, the victim girl has lost her virgin. Therefore, the victim girl has clearly identified the appellant one who committed the offence. The entire evidence shows that the victim girl has not immediately informed to her parents or any one else. Soon after the occurrence, she suffered from fever and infection and she was taken to hospital and given treatment. Subsequently the parents of victim girl informed about the occurrence to the respondent police.

14. Therefore, from the evidence of P.W.3/victim girl, P.W.1/mother of the victim girl P.W.2/father of the victim girl, P.Ws.9 and 10/Doctors, Ex.P.16/the statement of the victim girl recorded under Section 164 Cr.P.C., by the learned Judicial Magistrate, Ex.P.5/Age certificate of the victim girl, Ex.P.3/Certificate of Examination for Sexual Offence and Ex.P.4/Biological Report with final Opinion, the prosecution has established that at the time of occurrence, the age of the victim girl is 8 years and she was subjected to penetrative sexual assault and the appellant has committed the said offence.

15. Therefore, since the victim girl is below the age of 12 years, this Court also finds that the appellant has committed the offence under Section 5(m) of POCSO Act, which is punishable under Section 6 of POCSO Act. The victim girl was forcibly taken by the appellant with an intent to have sexual intercourse. The custody of the minor child was removed by the appellant from lawful guardian without their consent with an intention to have sexual assault. Therefore, the appellant has committed the offence under Section 366 IPC. The prosecution has proved both the charges framed against the appellant and the trial Court rightly appreciated the entire evidence and convicted the appellant for the above said offences. This Court, while considering the age of the victim girl that she is only 8 years and the appellant is aged 30+, does not find any mitigating circumstances to reduce the sentence and there is no merit in the appeal and it is liable to be dismissed. Accordingly, this



Criminal Appeal is dismissed. Consequently connected miscellaneous petition is closed. The trial court is directed to take steps to secure the presence of the appellant to serve the remaining period of sentence.

WEB COPY

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mpa

To

1. The Sessions Judge,
Mahila Court, Salem,
Salem District.
2. The Inspector of Police,
Karippatti Police Station,
Karippatti, Salem District.
3. The Director General of Police,
Chennai.
4. The Public Prosecutor,
High Court of Madras.

+1cc to M/S.Vasavisridevi, Advocate, S.R.No.14670

Copy to:

The Section Officer,
Criminal Section ,
High Court, Madras.

Crl.A.No.934 of 2019
and Crl.M.P.No.19336 of 2019

LN (CO)
SU (19/07/2021)